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# MercantileBank

Edwin A. (Ted) Walker Banking Officer ESCORDATION No. 129 9325

MAR 23 1981 - 2 35 PM

IN ERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Recordation Branch
12th Street and Constitutional
Avenue, N.W.
Washington, D.C. 20423

Gentlemen:

Enclosed please find a Security Agreement, Chattel Mortgage and Assignment of Account and Contract Rights dated on December 24, 1980, between Mercantile National Bank at Dallas, a national banking association, as secured party, and Edward E. Weadock, as borrower, covering a security interest granted from Edward E. Weadock to Mercantile National Bank at Dallas in a FMC Corporation, 4000 cubic foot capacity, 100 ton covered hopper car numbered PLMX/12595.

Enclosed for recording, pursuant to Section 20(c) of the Interstate Commerce Act are the originals and two counterparts of the above described security agreement.

The parties to the transaction are as follows:

Mortgagor - Edward E. Weadock, 15611 Ranchita, Dallas, Texas 75248.

Mortgagee - Mercantile National Bank at Dallas, P. O. Box 225415, Dallas, Texas 75265.

Please mail to the undersigned two counterparts of the security agreement. Our check in the amount of \$50.00 in payment of the recordation fee is enclosed.

Very truly yours,

MERCANTILE NATIONAL BANK AT DALLAS

Edwin Haboatke

Edwin A. (Ted) Walker [7 WWW Banking Officer Hd 92 7]

BECEINED

Enclosures

RECORDATION NO. 129-9-325

# MAR 2 3 1981 - 35 PM

#### INTERSTATE COMMERCE COMMISSION

SECURITY AGREEMENT, CHATTEL MORTGAGE AND ASSIGNMENT OF ACCOUNTS AND CONTRACT RIGHTS

EDWARD E. WEADOCK, of 15611 Ranchita, Dallas, Texas 75248 (hereinafter referred to as "Debtor") and MERCANTILE NATIONAL BANK AT DALLAS, a national banking association located at 1704 Main Street, Dallas, Texas (hereinafter referred to as "Secured Party") agree as follows:

WHEREAS, the Debtor has executed and delivered to the Secured Party an installment note (hereinafter referred to as the "Note") dated of even date herewith in the face amount of FORTY-ONE THOUSAND TWO HUNDRED DOLLARS (\$41,200.00 ), payable in twenty (20) installments over a five year period from the date thereof, and bearing interest at the over the prime rate of one percent (1%) per annum, and having the rate of other provisions set forth therein, said Note evidencing Mercantile funds advanced by the Secured Party to Debtor to pay the pur-National chase price owing for certain railroad equipment, more com-Bank at pletely described on Exhibit A attached hereto and made a Dallas part hereof for all purposes (hereinafter referred to as the effective "Equipment"); and

WHEREAS, the Debtor has agreed to grant to Secured Party a security interest in the Equipment owned by Debtor, as security for payment of the Note; and

WHEREAS, PLM RAILCAR MANAGEMENT, INC., a California corporation (hereinafter referred to as "RMI") and Debtor entered into that certain Management Agreement (hereinafter referred to as the "Management Agreement") whereby RMI manages, leases, and operates the Equipment on behalf of Debtor; and

WHEREAS, the Debtor has agreed to assign and grant to Secured Party all of its rights, title and interests in and under said Management Agreement as security for payment of the Note:

NOW, THEREFORE, in consideration of the advance under the Note and the promises contained herein, the parties hereto hereby agree as follows:

# SECTION I.

# CREATION OF SECURED INTEREST

Debtor hereby grants to Secured Party a security interest in, a chattel mortgage in, and assignment of the Collateral described in Section II of this Security Agreement (hereinafter referred to as the "Security Agreement") to secure performance and payment of (i) the Note, and (ii) all renewals, rearrangements and/or extensions of the Note.

#### SECTION II.

# COLLATERAL

The Collateral, in which a security interest and assignment has been granted by this Security Agreement, is all of the right, title and interest of Debtor in and to (i) the Equipment, (ii) the Accounts and Contract Rights arising under the Management Agreement, (iii) all leases (hereinafter referred to as the "Lease Agreements") now or hereafter existing, including but not limited to leases between RMI, as Lessor, and other entities as Lessee, on the Equipment, (iv) all of Debtor's right to receive and collect all per diem

mileage payments now or hereafter to become payable to the Debtor with respect to such Equipment, and (v) the proceeds of such Collateral. Debtor will provide Secured Party with (1) quarterly reports of current leases within fifteen (15) days of the end of each calendar quarter, and (2) reports of current leases upon the request of Secured Party.

#### SECTION III.

#### PAYMENT OBLIGATIONS OF DEBTOR

- 1. Debtor shall pay to Secured Party any such sum or sums due or which may become due pursuant to the Note or any other promissory note or notes now or hereafter executed by Debtor to evidence Debtor's indebtedness to Secured Party in accordance with the terms of such Note or other promissory note or notes and the terms of this Security Agreement.
- Debtor shall pay to Secured Party on demand all expenses and expenditures, including reasonable attorneys' fees and other expenses incurred or paid by Secured Party in exercising or protecting its interests, rights and remedies under this Security Agreement, plus interest thereon at the maximum rate of interest permitted by applicable law with respect to Debtor. It is the intention of the Debtor and the Secured Party to contract in strict compliance with the usury laws of the State of Texas from time to time in effect. furtherance thereof, the Debtor and the Secured Party stipulate and agree that none of the terms and provisions contained in this Security Agreement or the Note shall ever be construed to create a contract to pay interest for the use, forbearance or detention of money at a rate in excess of the maximum interest rate permitted to be charged by applicable law from time to time in effect. In the event the Secured Party shall charge and/or collect monies which are deemed to constitute interest which would otherwise increase the effective rate on the Note to a rate in excess of that permitted to be charged by applicable law, then all such sums deemed to constitute interest in excess of the maximum rate permitted by applicable law shall be immediately returned to the Debtor upon such determination or shall be deemed applied to the principal as a prepayment, at Secured Party's election.
- 3. Debtor shall pay immediately upon Secured Party's declaration and demand the entire unpaid indebtedness of Debtor to Secured Party, whether created or incurred pursuant to the Note or this Security Agreement or otherwise, upon the occurrence of an Event of Default, as defined in Section V of this Security Agreement.

# SECTION IV.

#### DEBTOR'S WARRANTIES, REPRESENTATIONS AND AGREEMENTS

- 1. The Collateral will meet the following requirements continuously from the time each part of the Collateral comes into existence until the indebtedness secured hereby is paid in full:
- a. All Account(s) or Contract Right(s) will be due and payable not more than ninety (90) days from the date of the invoice or agreement evidencing the same.
- b. All Account(s) or Contract Right(s) arose or will arise from the performance of the duties and obligations of the Lease Agreements by RMI (or its Agent) and the duties and obligations of the Management Agreement between RMI and

Debtor, which duties and obligations have been or will be fully and satisfactorily performed by RMI of Debtor.

- c. Neither the Equipment nor the Account(s) or Contract Right(s) is subject to any prior or subsequent assignment, claim, lien or security interest other than that in favor of Secured Party.
- d. Neither the Account(s) nor the Contract Right(s) is subject to any setoff, counterclaim, defense, allowance or adjustment by the Account Debtor(s) other than discounts for prompt payment shown on the invoice.
- e. No notice of bankruptcy, insolvency, or financial impairment of Account Debtor(s) has been received by Debtor.
- 2. Debtor's legal residence is that appearing at the beginning of this Security Agreement. Debtor will promptly notify Secured Party of any change of location of his legal residence.
- 3. All information supplied and statements made by Debtor in any financial, credit or accounting statement or application for credit prior to, contemporaneously with or subsequent to the execution of this Security Agreement are and shall be true, correct, complete, valid and genuine in all material respects.
  - 4. Debtor is owner of the Collateral.
- 5. The office where Debtor keeps his records concerning the Accounts and Contract Rights covered by this Security Agreement is the address shown above for Debtor.
- 6. Debtor shall pay, prior to delinquency, all taxes, charges, liens and assessments against the Collateral, and upon Debtor's failure to do so, Secured Party, at its option, may pay any of them and shall be the sole judge of the legality or validity thereof and the amount necessary to discharge the same. Such payment shall become part of the indebtedness secured by this Security Agreement and shall be paid to Secured Party by Debtor immediately upon demand, with interest thereon at the maximum rate of interest permitted by applicable law with respect to Debtor.
- 7. Debtor shall notify Secured Party promptly in writing when any Account(s) or Contract Right(s) constituting part of the Collateral ceases to meet any of the requirements of this Security Agreement.
- 8. Debtor shall at all times keep complete and accurate books and records reflecting all facts concerning each Account and Contract Right, including those pertaining to Debtor's warranties, representations and agreements under this Security Agreement, and make or allow Secured Party to make written designation on Debtor's books and records to reflect thereon the assignment to Secured Party of each Account or Contract Right covered by this Security Agreement.
- 9. Debtor shall not, voluntarily or involuntarily, subject the Collateral or its proceeds or allow the Collateral or its proceeds to be subjected to any interest of any transferee, buyer, secured party, encumbrancer or other third person, and shall not modify the contract with any Account Debtor(s) or diminish any security for an Account or Contract

Right without giving Secured Party five (5) days' notice in advance in writing and without first receiving written consent from Secured Party.

- 10. Debtor shall, at its expense, do, make, procure, execute, and deliver all acts, things, writings and assurances as Secured Party may at any time require to protect, assure or enforce Secured Party's interests, rights and remedies created by, provided in, or emanating from this Security Agreement.
- 11. Debtor shall sign and execute alone or with Secured Party any Financing Statement or other document, or procure any document and pay all connected costs necessary to protect the security interest under this Security Agreement against the rights or interests of third persons.
- 12. If Secured Party should, at any time, be of the opinion that the Collateral is not sufficient or has declined or may decline in value, then Secured Party may call for additional Collateral satisfactory to Secured Party, and Debtor promises to furnish such additional security forthwith. The call for additional security may be oral or by telegram or by United States mail addressed to the address of Debtor shown at the beginning of this Agreement.
- 13. Debtor or the Lessee of the Collateral shall provide a valid and enforceable inland marine insurance policy in an amount at least equal to the Note at all times until the Note is paid in full. Should any portion of the Equipment be damaged, such that insurance proceeds are payable to Debtor due to damage, Debtor shall fully utilize said insurance proceeds to either repair the Equipment or deliver the insurance proceeds in full to Secured Party for application to the Note or other notes secured hereby at the option of the Secured Party.

#### SECTION V.

### EVENTS OF DEFAULT

Debtor shall be in default under this Security Agreement upon the happening of any of the following events or conditions (herein called an "Event of Default"):

- 1. Debtor's failure to pay, when due, any indebtedness secured by this Security Agreement, either principal or interest.
- 2. Default by Debtor in the punctual performance of any of the obligations, covenants, terms or provisions contained or referred to in this Security Agreement or in any note secured hereby.
- 3. Debtor fails to fulfill or satisfy any warranty, representation or statement contained or referred to in this Security Agreement or in any note secured hereby.
- 4. Any waranty, representation or statement contained in this Security Agreement made or furnished to Secured Party by or on behalf of Debtor in connection with this Security Agreement or to induce Secured Party to make a loan to Debtor proves to have been false in any respect when made or furnished or becomes false in any respect while any indebtedness secured hereby is outstanding.
- 5. Loss, theft, substantial damage, destruction, sale or encumbrance of or to any of the Collateral, or the making of any levy, seizure or attachment thereof or thereon.

6. Debtor's insolvency; or the appointment of a receiver of all or any part of the property of Debtor; or an assignment for the benefit of creditors by Debtor; or the calling of a meeting of creditors of Debtor; or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Debtor.

- 7. Any statement of the financial condition of Debtor to Secured Party submitted to Secured Party proves to be false.
- 8. A default or breach under that certain letter agreement of even date herewith addressed to Secured Party and executed by Debtor and RMI concerning the Management Agreement.

#### SECTION VI.

# SECURED PARTY'S RIGHTS AND REMEDIES

- 1. Rights Exclusive of Default.
- a. This Security Agreement, Secured Party's rights hereunder or the indebtedness hereby secured may be assigned in whole or in part, and in any such case the Assignee shall be entitled to all of the rights, privileges and remedies granted in this Security Agreement to Secured Party, and Debtor will assert no claims or defenses he may have against Secured Party against the Assignee except those granted in this Security Agreement.
- b. Upon written notice to Debtor, Secured Party may notify or require Debtor to notify Account Debtors obligated on any or all of Debtor's Accounts or Contract Rights to make payment directly to Secured Party, and Secured Party may take possession of all proceeds of any Accounts or Contract Rights in Debtor's possession.
- c. Upon the occurrence of an Event of Default or at any time thereafter, Secured Party may take any steps which Secured Party deems necessary or advisable to collect any or all Accounts, Contract Rights, Proceeds or other Collateral, or to sell, transfer, compromise, discharge or extend the whole or any part of the Accounts, Contract Rights, Proceeds or other Collateral, and apply the proceeds thereof to Debtor's indebtedness to Secured Party in accordance with this Security Agreement.
- d. In protecting, exercising or assuring its interests, rights and remedies under this Security Agreement, Secured Party may sign and endorse negotiable and other instruments for the payment of money, documents of title or other evidences of payment, shipment or storage for any form of Collateral or proceeds on behalf of and in the name of Debtor.
- e. Secured Party may call at Debtor's place or places of business at intervals to be determined by Secured Party and, without hindrance or delay, inspect, audit, check and make extracts from the books, records, journals, orders, receipts, correspondence and other data relating to the Collateral or to any transaction between Debtor and Secured Party, and Debtor shall assist Secured Party in making any such inspection.
- f. Secured Party may make any demand upon or give any notice to Debtor by its deposit in the mails or with a telegraph company, addressed to Debtor at Debtor's residence

at the beginning of this Security Agreement, or to the change of such address of which Debtor has last notified Secured Party in writing.

- g. At its option, Secured Party may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Secured Party on demand for any such payment made or any expense incurred by Secured Party pursuant to the foregoing authorization, plus interest thereon at the maximum rate of interest permitted by applicable law with respect to Debtor.
- h. Secured Party may render and send to Debtor a statement of account showing loans made, all other charges, expenses and items chargeable to Debtor, payment made by debtor against the loans, proceeds collected and applied to the loans, other appropriate debits and credits, and the total of Debtor's indebtedness on the loans as of the date of the statement of account, and the statement of account shall be considered correct in all respects and accepted by and conclusively binding upon Debtor, except for specified objections which Debtor makes in writing to Secured Party within fifteen (15) days from the date upon which the statement of account is sent.

#### 2. Remedies in the Event of Default.

- a. Upon the occurrence of an Event of Default and at any time thereafter, Secured Party may declare all indebtedness secured hereby immediately due and payable, and shall have the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State of Texas, including without limitation thereto, the right to sell, lease or otherwise dispose of any or all of the Collateral and the right to take possession of the Collateral, and for that purpose Secured Party may enter upon any premises on which the Collateral or any part thereof may be situated and remove the same therefrom. Secured Party may require Debtor to assemble the Collateral and make it available to Secured Secured Party may require Debtor Party at a place to be designated by Secured Party which is reasonably convenient to both parties. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other disposition thereof is to be made. The requirement of sending reasonable notice shall be met if such notice is mailed, postage prepaid, to Debtor at the address designated at the beginning of this Security Agreement at least five (5) days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling or the like shall include Secured Party's reasonable attorneys' fees and expenses, and Debtor agrees to pay such fees and expenses plus interest thereon at the maximum rate of interest permitted by applicable law with respect to Debtor. Debtor shall remain liable for any deficiency.
- b. Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.
- c. The remedies of Secured Party hereunder are cumulative, and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any of the other remedies of Secured Party.

#### SECTION VII.

#### ADDITIONAL AGREEMENTS

- 1. "Secured Party" and "Debtor" as used in this instrument include the heirs, executors or administrators, successors, representaties, receivers, trustees and assigns of those parties.
- 2. The headings appearing in this instrument have been inserted for convenience only and shall be given no substantive meaning of significance whatever in construing the terms and provisions of this instrument. Terms used in this instrument which are defined in the Uniform Commercial Code as adopted in the State of Texas are used with the meanings as therein defined.
- 3. The law governing this secured transaction shall be that of the State of Texas in force as of the date of this instrument. This Security Agreement shall be performable in Dallas, Dallas County, Texas.

EXECUTED AND EFFECTIVE this 24 day of 1980.

Edward E. Weadock

DEBTOR

MERCANTILE NATIONAL BANK AT DALLAS

By Edwin A. Walker Title: Banking Officer

SECURED PARTY

STATE OF TEXAS

COUNTY OF DALLAS )

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared EDWARD E. WEADOCK, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

of Secenter, 1980.

(SEAL)

Notary Public in and for Dallas County, Texas

My Commission Expires: //8

STATE OF TEXAS )
COUNTY OF DALLAS )

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared <u>Edwin A</u>

<u>Nalker</u>, <u>a Banking Officer</u> of MERCANTILE NATIONAL

BANK AT DALLAS, a national banking association, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said banking association.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 24th day of <u>Secenher</u>, 1980.

(SEAL)

Notary Public in and for Dallas County, Texas

My Commission Expires: 6/81

# EXHIBIT A

One covered hopper railroad car more particularly described as follows:

FMC Corporation 4700 cu. ft. capacity, 100 ton covered hopper car numbered PLMX 12595 and an assignment of all leases, rents, proceeds and the management contract between Debtor and PLM Railcar Management, Inc., dated December 29, 1980 concerning such railroad car.